IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2605 OF 2006

Gautam Export Corporation & ors. — Petitioners
vs.
Union of India through the Commerce Secretary, & anr. — Respondents

Mr.E.P.Bharucha, Sr.Counsel i/b.M/s.Mulla & Mulla & Craigie Blunt & Caroe for the petitioners.

Mr.J.K.Mistry i/b.Mr.Pankaj Kapoor for respondent no.1.

Mr.D.R.Zaiwala i/b.Mr.N.I.Bakali for respondent no.2.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 5th December, 2006

P.C.

The petitioners' company, in pursuance to the registration certificate under the Spices Board Act, 1986 ("the Act"), from 9th September, 2002 was exporting numerous spices including chilli powder, to a number of countries, including European Union Countries. The said certificate was valid upto 31st August, 2005.

2. The European Commission, Health & Consumer Protection Directorate General (for short, "EC") issued a Rapid Alert Notification (RAN) dated 9th May 2003 that a consignment of chilli powder exported by petitioner no.1 to one SOCOHERB SA contained prohibited colourant called Sudan-1. The petitioners informed the Spices

Board that M/s.Volga was its single source manufacturer/supplier of ground spices including chilli powder. However, the Spices Board in pursuance to the receipt of the RAN dated 9th May 2003 by memorandum dated 13th June 2003, suspended the petitioners' certificate of registration, for a period of 45 days. The Spices Board on 2nd July 2003, heard the petitioners representative. The petitioners tendered written submissions also. The Spices Board by its order dated 24th July 2003 extended the suspension of the certificate. Respondent no.1 by its memorandum dated 25th August 2003, directed the Spices Board to cancel the first petitioner's registration.

3. The EC also addressed a fax dated 2nd December 2003 to the Indian Spice and Food Stuff Exporters Association which sets out that the EC adopted standard testing procedures for determining the presence of Sudan 1 in chilli and chilli products.

4. The Secretary, Department of Commerce of the first respondent directed the Director General of Foreign Trade (the DGFT) to suspend/cancel the Import Export Code (IE Code) of the petitioners company. The DGFT accordingly issued a show cause notice dated 30th April 2004 under Section 8(1)(b) of the Foreign Trade (Development & Regulation) Act, 1992 (The Foreign Trade

Act), based on the said RAN dated 9th May 2003. The petitioners replied to the said show cause notice and submitted the written submissions and reiterated the contentions as raised earlier. After hearing the DGFT on 23rd June 2004 dropped the proceedings for suspension and cancellation by recording as under:

"i) It was not certain whether the samples allegedly tested were taken from the consignments exported by the 1st petitioner.

ii) There was no evidence or co-relating of documents to prove that the samples procured had been taken from the consignments exported by the 1st petitioner.

iii) The columns pertaining to "Place of Test" and "Method of Analysis Used" were kept blank in the above RAN dated 9th May 2003. The above seemed to suggest that the test was not done properly and the results were consequently not reliable.

iv) The RAN dated 9th May 2003 was issued on the basis of samples drawn on 7th May 2003. An official method of analysis was declared in Europe by Information Notification No.2003/BAD-add06 dated 10th June 2003. As the system for testing for Sudan 1 was put in place only in June 2003, tests conducted in May 2003 may not be reliable.

v) The above tests were conducted in the absence of a representative of the 1st petitioner."

5. The Spices Board further issued a show cause notice dated 3rd August 2004 under the amended Regulations of the Spices Board (Registration of Exporters) Regulation,

1989 (the Regulations), by alleging that the petitioners had exported spices not conforming to the quality standards in force in the country of export and/or not confirming to the quality standards in the export contract. The petitioners again resisted the same by written submissions and pointed out that the DGFT had on identical material concluded that the first petitioner was not guilty of the charges levelled against it.

6. One more show cause notice dated 19th January 2005 was received by the first petitioner from the Spices Board on the same line, based on RAN dated August 2004. The petitioners again replied to the same on 4th February 2005. The Spices Board forwarded further RANs to the first petitioner by its letter dated 16th February 2005. After hearing on 19th August 2005 by order dated 30th August 2005 rejected the submissions of the petitioners and cancelled the certificate of registration. The petitioners' request for renewal was also rejected by a communication dated 9th September, 2005.

7. An appeal dated 18th October, 2005 was preferred by petitioner no.1. First respondent by its order dated 18th May 2006, allowed the appeal and restored the certificate of registration.

8. The petitioners are aggrieved by the following observations in the said order:-

> "been out of business for the last three years, which in itself is a sufficient punishment. .....
>
> "be given an opportunity to mend their ways and contribute to the export of Indian spices in the international market,. The CRESs of the appellant exporting firms are, therefore restored with the warming that these firms must ensure that their export consignments in future are not detected for any of the contaminants by the European Commission and that no Rapid Alerts are issued against them. The three exporting firms are advised that they would be on the watch list of the Spices Board for detection of any contaminant whatsoever or any other irregularity by them in respect of the export consignments sent by them. The Spices Board is advised to take strict action against them, if any such irregularity committed by them comes to their notice."

9. Though the registration has been re-granted by allowing the appeal, still the petitioners being aggrieved by the above observations, has challenged the same to the extent referred above, also on the ground that these observations harm the reputation of the petitioners company. The Spices Board by its letter dated 6th July 2006 forwarded a fresh certificate of registration dated 5th July 2006 which is valid upto 31st August 2008, by a warning with dire consequences if the petitioners failed to comply with prescribed quality standards hereafter.

10. Heard parties. The factual position as of now is that the concerned Appellate Authority has allowed the appeal and granted the certification of registration and the petitioners are now allowed to carry out their business of export. Considering the observations made in the above paragraph, in the facts and circumstances of the case, without going further into the details non-supply of copies of RANs as alleged, we see there is no reason to interfere with the observations as made by the authorities. The warning as given by the Spices Board while granting the certificate of the export of spices to the petitioners, in no way can be said to be unjust or affects the reputation of the petitioners as alleged. The action was taken pursuant to the communication by the E.C. who had detected Sudan-I dyes. The lot numbers were identified as 220483/02 and 220472/01. The country of origin was India and the party named was Gautam Export Corporation, the petitioners herein. There is nothing on record to hold that E.C. had recalled the RANs. After considering the various RANs and its contents, the authorities had initially suspended the registration. The matter pertains to the credibility of India as an assured exporter of spices. The warning is merely a reminder to exporters that India's export cannot be endangered.

. The fact is that the Appellate Authority has granted

the licence by giving warning. Those RANs issued from time to time by the EC just cannot be overlooked in the interest of public at large, apart from the reputation of the country and other similarly placed business entrepreneurs.

11. Considering the above, we are of the view that no case has been made out by the petitioners to interfere with the observations as challenged. This would be therefore not a fit case for this Court to interfere in the exercise of its extraordinary jurisdiction. The petition is therefore dismissed in limine. No costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)